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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

ANTHONY ZUNIGA, Plaintiff and Appellant, v. MARENGO PROPERTIES LLC, Defendant and Respondent.	C086460 (Super. Ct. No. STKCVUPI20160005350)

Plaintiff Anthony Zuniga was a customer at a St. Patrick's Day event put on by Finnegan's Irish Pub and Grill (Finnegan's) in 2016, when a fight started after "last call." Zuniga's complaint alleges Finnegan's security hit and pursued various individuals, including Sonya Frazier.[1] Zuniga further contends that, even after Frazier was in her vehicle, Finnegan's security aggressively pursued her, breaking her windows. As she

[1] Frazier was a defendant in this action, but Zuniga appears to have settled his claims against her.

fled, Frazier ran over Zuniga, who was walking in the parking lot. Zuniga's complaint states a cause of action against Marengo Properties LLC (Marengo), the landowner of the strip mall in which Finnegan's was located, for premises liability, alleging that it negligently owned, maintained, managed and operated the parking lot. The trial court granted Marengo's motion for summary judgment on the bases that it owed no duty to provide its own security for the parking lot, and Zuniga's causation arguments failed. On appeal, Zuniga challenges the trial court's exclusion of some of the evidence he offered in opposition to Marengo's motion. Zuniga's arguments in support of his premises liability claim all turn on whether Marengo had a duty to provide security. Because we conclude the admissible evidence establishes Marengo had no such duty, we will affirm the judgment.

I. BACKGROUND

A. Factual Background

Marengo is the landowner of a strip mall called the Marengo Center in Stockton. Finnegan's became a tenant at the center in 2012. Since that time, Finnegan's has employed its own security. Prior to March 18, 2016, Marengo had received no complaints about Finnegan's or its security, nor had Marengo received notice of any misconduct by Finnegan's security. Pursuant to the parties' lease agreement, Marengo retained control of the parking lot.[2] Marengo had no notice of any personal injuries arising from motor vehicle accidents in the parking lot. Marengo considered the Marengo Center and surrounding neighborhood safe.

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[2] "Landlord will retain exclusive management and control of all exterior surfaces, partitions, and areas of the exterior perimeter surrounding Tenant's space, as well as all other such exteriors of leased spaces, and control of common areas and parking areas of the Joseph Marengo Center."

Marengo gave Finnegan's permission to use the common area for its St. Patrick's Day event. The annual celebration included a "beer garden" in the parking lot.[3] Marengo was aware there would be alcohol available in the beer garden. Marengo required Finnegan's to obtain permits from the applicable governmental authorities. Finnegan's received authorization from the Fire Marshall regarding the beer garden, and from the Department of Alcoholic Beverage Control regarding the number of authorized patrons. Finnegan's provided security, and the security worked inside the bar and outside in the parking lot. At least four entrances and exits to the lot remained open during the event.

Zuniga arrived at Finnegan's on the evening of March 17, 2016. After "last call," he was walking with a friend in the parking lot when he was hit by Frazier's truck as she drove away.

B. Procedural Background

Zuniga's complaint includes a cause of action for premises liability against Marengo, Pacifica Restaurant Group and the owner of Finnegan's alleging they negligently owned, maintained, managed and operated the premises. Marengo moved for summary judgment, arguing it owed Zuniga no duty to prevent the incident because it was not reasonably foreseeable and, alternatively, any breach of duty was not the legal cause of his injuries. The trial court granted the motion. After sustaining all of Marengo's objections to Zuniga's evidence and denying Zuniga's request for judicial notice, the court held there was no evidence of prior similar incidents that would support the heightened foreseeability of criminal activity necessary to impose on Marengo a duty to provide security for the parking lot, nor was the inherent nature of the St. Patrick's Day

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[3] Finnegan's also uses a beer garden for a second annual event.

event sufficient by itself to create a duty. The trial court also rejected Zuniga's causation arguments.

Judgment was entered in favor of Marengo, and Zuniga timely appealed.

II. DISCUSSION

A. Standard of Review

"Because plaintiff's appeal is from a trial court order granting summary judgment for defendant, we independently examine the record to determine whether there exist triable issues of fact warranting reinstatement of the action. [Citation.] In order to prevail in an action based upon a defendant's alleged negligence, a plaintiff must demonstrate that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of his or her injuries." (*Morris v. De La Torre* (2005) 36 Cal.4th 260, 264.) Code of Civil Procedure section 437c " 'place[s] the initial burden on the defendant moving for summary judgment and shift[s] it to the plaintiff upon a showing that the plaintiff cannot establish one or more elements of the action.' [Citation.] [¶] Accordingly, in this matter we must determine whether defendant has shown that plaintiff has not established a prima facie case of negligence. In making that assessment on review of a grant of summary judgment for defendant, we view the evidence in the light most favorable to plaintiff as the losing party below." (*Morris v. De La Torre*, *supra,* at p. 265.)

B. Evidentiary Issues

"Although we view the facts in the light most favorable to plaintiff, we nevertheless require record *evidence* supporting those facts." (*Morris v. De La Torre*, *supra,* 36 Cal.4th at p. 265, fn. 1.) "[W]e examine the evidence submitted in connection with the summary judgment motion, with the exception of evidence to which objections have been appropriately sustained." (*Paslay v. State Farm General Ins. Co*. (2016) 248 Cal.App.4th 639, 644.) Accordingly, before we can address Zuniga's substantive

arguments, we must first address his assertion that the trial court improperly sustained certain objections to his evidence and denied his request for judicial notice.

1. Hearsay Statements by the Owner of Finnegan's

Zuniga challenges the trial court's exclusion of various Facebook postings allegedly made by the owner of Finnegan's, Anthony Mannor, advertising and recapping the event, a video from the local news that includes an interview with Mannor, a Facebook post allegedly made by Mannor regarding a shot being fired at Finnegan's door in January 2016, and statements in a declaration filed by Zuniga's attorney summarizing previous statements by Mannor. The trial court found that all of these submissions contained inadmissible hearsay and were not relevant for any non-hearsay purpose. On appeal, Zuniga's identification of the relevant information and defense of the hearsay statements within them appears to be incomplete,[4] but he seems to assert they all fall within the exceptions to hearsay set forth in Evidence Code sections 1220, 1224 and 1230. "In order to preserve the claim for appeal, the proponent has to have alerted the trial court to the exception relied upon and borne the burden below of laying the proper foundation." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 282-283; accord *People v. Livaditis* (1992) 2 Cal.4th 759, 778; *Scott S. v. Superior Court* (2012) 204 Cal.App.4th 326, 342; see also *Gatton v. A.P. Green Services, Inc*. (1998) 64 Cal.App.4th 688, 693, disapproved on another ground in *Sweetwater Union High School Dist. v. Gilbane Building Co.* (Feb. 28, 2019, S233526) __ Cal.5th__ [p. 15, fn. 8] (2019 Cal.LEXIS 1127) ["The proponent of hearsay evidence bears the burden of showing it

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[4] In particular, Zuniga does not identify any specific portion of the Facebook posts regarding the St. Patrick's Day event he seeks to admit but rather states broadly that they are statements by Mannor that are against his and Marengo's interests and against their common interest "because they show the sheer magnitude of the event, the consumption of alcohol, and tend[] to show the need to impose a duty of care to protect patrons." This is insufficient to establish error on appeal.

falls within a hearsay exception"].) Zuniga has failed to provide a citation to the record indicating that he raised these arguments before the trial court. Nor does our review of the record indicate he did so. These arguments have not been preserved for appeal. (See, e.g., *Clark v. Optical Coating Laboratory, Inc*. (2008) 165 Cal.App.4th 150, 170 [plaintiff waived Evidence Code section 1230 argument by failing to raise it in trial court].)[5] Accordingly, we cannot conclude the trial court erred in excluding these alleged statements by Mannor.

2. Hearsay Statement by Former Finnegan's Bartender

Zuniga challenges the trial court's exclusion of his statement, during his deposition, that he heard from a former bartender for Finnegan's that someone shot at Finnegan's door. The trial court excluded the statement as inadmissible hearsay, explaining that the exception set forth in Evidence Code section 1220 did not apply. Zuniga raised this theory of admissibility at the hearing on Marengo's motion for summary judgment. On appeal, Zuniga has changed his approach and suggests the statement falls within the exception to hearsay set forth in Evidence Code section 1221. This statute provides that "[e]vidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth." (Evid. Code, § 1221.) Zuniga has forfeited his argument that this hearsay exception applies by his failure to raise it and lay the proper foundation in the trial court.

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[5] Because Zuniga has not established any error regarding the exclusion of evidence of Mannor's alleged Facebook posts, whether the trial court properly sustained an objection regarding the authentication of these posts is irrelevant.

3. Request for Judicial Notice of License Status

Zuniga contends the trial court erred by refusing to take judicial notice of documents downloaded by his counsel from the Department of Alcoholic Beverage Control's website. Zuniga sought judicial notice of these documents under Evidence Code section 452, subdivision (h), to show Finnegan's license to serve alcohol was expired at the time of the incident. This provision permits a court to take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h).) On appeal, Zuniga notes we have previously taken judicial notice of records of a state agency posted on its official website. (See *In re White* (2004) 121 Cal.App.4th 1453, 1469, fn. 14 [taking judicial notice of records of the State Bar, posted on its official website, showing the admission date and employment of attorney].) While this is true, " '[t]aking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning.' " (*Herrera v. Deutsche Bank National Trust Co*. (2011) 196 Cal.App.4th 1366, 1375.) Moreover, matters are ordinarily subject to judicial notice only if they are reasonably beyond dispute. (*Id*. at p. 1374.) As the trial court noted, the problem with Zuniga's request is that the Department of Alcoholic Beverage Control website does not currently suggest that Finnegan's had an expired license, and the document relied upon by Finnegan to suggest otherwise is internally inconsistent. It indicates it was printed on May 12, 2016, and states that the expiration dates for Finnegan's general eating place license and event permit license were February 29, 2016, but also that these licenses were "ACTIVE" at the time of printing. Zuniga argues "a reasonable inference" is that Finnegan's event license was lapsed at the time of the incident and reinstated later. This allegedly "reasonable inference" is disputable based on the document provided by Zuniga. Therefore, the trial court did not err in refusing to take judicial notice of it.

4. Other Evidentiary Objections

Zuniga's remaining evidentiary arguments on appeal have no bearing on our analysis of the issues at hand. Zuniga appeals the trial court's exclusion of videos allegedly depicting the events in the parking lot on the basis that they were not properly authenticated. For purposes of this appeal, we assume the accident occurred in the parking lot and was caused by Finnegan's security. As discussed below, we address only whether Marengo had a duty to provide its own security for the area, and not the parties' arguments regarding causation. Zuniga also challenges the trial court's exclusion of evidence of a statement made by Frazier while she was driving that she wanted "out of here," and statements by witnesses that Frazier seemed "terrified" and in "total panic." Zuniga admits the exclusion of this information was unlikely to have impacted the trial court's decision. Because this evidence has no relevance to our discussion either, we need not reach the issue of whether it was properly excluded. (*Swanson v. State Farm General Ins. Co.* (2013) 219 Cal.App.4th 1153, 1165, fn. 11.)

Now that we have identified the relevant evidence, we will turn to the question of Marengo's duty.

C. Premises Liability

"By now it is well established that landowners must maintain their premises in a reasonably safe condition, and that in the case of a landlord, the general duty of maintenance includes 'the duty to take reasonable steps to secure common areas against *foreseeable* criminal acts of third parties that are likely to occur in the absence of such precautionary measures.' " (*Sharon P. v. Arman, Ltd*. (1999) 21 Cal.4th 1181, 1189 (*Sharon P.*), disapproved on another ground in *Reid v. Google, Inc*. (2010) 50 Cal.4th 512, 527, fn. 5.) "The existence and scope of a duty are questions of law for the court's determination, and foreseeability is a critical factor in the analysis. When foreseeability is analyzed to determine the existence or scope of a duty, foreseeability is also a question of law." (*Ericson v. Federal Express Corp*. (2008) 162 Cal.App.4th 1291, 1300; accord

Ann M. v. Pacific Plaza Shopping Center (1993) 6 Cal.4th 666, 678 (*Ann M.*), disapproved on another ground in *Reid v. Google, Inc.*, *supra,* at p. 527, fn. 5.)

1. Nondelegable Duty

Zuniga contends Marengo is vicariously liable for the acts of Finnegan's security guards. As a threshold matter, Marengo argues the trial court did not analyze the concept of vicarious liability and that such a claim was not set forth in the complaint. Zuniga's complaint states a single cause of action against Marengo for premises liability, alleging that it negligently owned, maintained, managed and operated the parking lot. Zuniga's briefing demonstrates that its vicarious liability argument is based on *Davert v. Larson* (1985) 163 Cal.App.3d 407 (*Davert*), a case limiting the ability of a landowner to immunize itself from liability by delegating the control and management of its property. In *Davert*, the defendant owned a 1/2500th undivided interest in the property from which a horse allegedly escaped through a gap or hole in the fence and collided with the plaintiffs' automobile. (*Id.* at p. 409.) We reversed a judgment of dismissal made on the basis that the defendant owed no duty of care to the plaintiffs as a landlowner because he took title to his interest in the property subject to a recorded declaration of covenants, conditions and restrictions delegating exclusive control to a property owners' association. (*Id*. at pp. 409, 413.) We explained that "[a] landowner or possessor owes a duty of care to persons who come on his property as well as to persons off the property for injuries due to the landowner's lack of due care in the management of his property. [Citations.] A landowner may be held liable for negligently allowing livestock to escape from his property onto a highway. [Citations.] Generally, the duty owed by a landowner is nondelegable." (*Id.* at p. 410.) Thus, a landowner cannot immunize itself from liability to third parties for tortious conduct by delegating control and management of the property to a separate legal entity (*id*. at p. 412) or delegating the duty to maintain property in a reasonably safe condition to an independent contractor (*Brown v. George Pepperdine Foundation* (1943) 23 Cal.2d 256, 259). Courts have explained that this doctrine of

nondelegable duty "is simply a form of vicarious liability." (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1375.) Zuniga's nondelegable duty argument arose as a response to a statement in Marengo's motion for summary judgment that it "did not have a duty to prevent the incident because the incident was not reasonably foreseeable, *and because security was provided by its tenant*." (Emphasis added.) The trial court's ruling reflects this understanding of Zuniga's argument. Under the heading "Vicarious Liability," it stated that, under *Davert*, "[Zuniga] is correct that duties to maintain property in a safe condition are not delegable. [Citation.] However, given that [Marengo] did not owe a duty to provide security in the first place, [Zuniga]'s argument is inapposite." Elsewhere, the trial court explained Marengo "cannot be found to have delegated a duty to provide security if no such duty ever arose." It is this threshold question of duty that we will address, not a claim that Zuniga was vicariously liable for the acts of Finnegan's security based on a theory not pled in his complaint.

On its face, we have no quarrel with the argument that Marengo cannot escape liability merely by noting Finnegan's hired security, but that argument presumes Marengo had a duty to provide security. As the trial court correctly noted, the potential usefulness of *Davert* and this proposition presupposes a duty on the part of Marengo to provide security. "The doctrine of nondelegable duty does not . . . *create* a duty where none would otherwise exist." (*Chee v. Amanda Goldt Property Management, supra,* 143 Cal.App.4th at p. 1375.) In other words, merely permitting Finnegan's to use the parking lot would not create a duty to provide security (or liability for Finnegan's security) if Marengo did not already have such a duty. Indeed, Zuniga's arguments relating to his premises liability claim all hinge on the assumption that Marengo had a specific duty to provide security. We will now turn to this dispositive issue.

2. Foreseeability

In *Ann M., supra,* 6 Cal.4th 666, our Supreme Court addressed "whether the scope of the duty owed by the owner of a shopping center to maintain common areas within its

possession and control in a reasonably safe condition includes providing security guards in those areas." (*Id*. at p. 670.) It said "the scope of the duty is determined in part by balancing the foreseeability of the harm against the burden of the duty to be imposed. [Citation.] ' "[I]n cases where the burden of preventing future harm is great, a high degree of foreseeability may be required. [Citation.] On the other hand, in cases where there are strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required." ' " (*Id.* at pp. 678-679.) "While there may be circumstances where the hiring of security guards will be required to satisfy a landowner's duty of care, such action will rarely, if ever, be found to be a 'minimal burden.' The monetary costs of security guards is not insignificant. Moreover, the obligation to provide patrols adequate to deter criminal conduct is not well defined. 'No one really knows why people commit crime, hence no one really knows what is "adequate" deterrence in any given situation.' [Citation.] Finally, the social costs of imposing a duty on landowners to hire private police forces are also not insignificant. [Citation.] For these reasons, we conclude that a high degree of foreseeability is required in order to find that the scope of a landlord's duty of care includes the hiring of security guards. We further conclude that the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises. To hold otherwise would be to impose an unfair burden upon landlords and, in effect, would force landlords to become the insurers of public safety, contrary to well-established policy in this state." (*Id*. at p. 679, fn. omitted.) These principles apply even when the plaintiff is asserting that security would only be required for a particular event. (See *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 539 [no duty to provide security guards for a party advertised by defendant using a public invitation on a social networking website].) The burden to provide security is not minimal in these instances either. (*Ibid*.)

In *Sharon P., supra*, 21 Cal.4th 1181, an unknown assailant sexually assaulted the plaintiff in an underground parking garage. (*Id*. at p. 1185.) Our Supreme Court found the evidence of prior crimes, which included bank robberies on the ground floor, insufficiently similar to the sexual assault on the plaintiff to "establish a high degree of foreseeability that would justify imposition of . . . an obligation" on the defendants' part "to provide security guards in their garage." (*Id.* at p. 1191.) The court also rejected, as unsupported and contrary to public policy, the assertion that underground parking facilities are "inherently dangerous" and hence that those who own or control them must provide guards even in the absence of prior similar incidents. (*Id*. at pp. 1191-1195.)

In granting Marengo's motion for summary judgment, the trial court relied largely on *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224 (*Delgado*), in which our Supreme Court applied the foregoing authorities and held the defendant bar had no duty to provide security under the facts presented in that case. (*Id*. at p. 245.) In *Delgado*, the plaintiff and a group of men exchanged hostile stares in the bar. (*Id*. at p. 231.) A security guard observed the staring and felt that a fight would occur. (*Ibid*.) He asked the plaintiff to leave, and the plaintiff and his wife went out to the parking lot. (*Ibid*.) There was no security guard in the parking lot at that time. (*Ibid*.) The group of men followed the plaintiff into the parking lot, where, joined by additional men, they severely beat him. (*Id*. at pp. 231-232.) The plaintiff sued the bar based on a theory of premises liability. (*Id*. at p. 232.) Our Supreme Court explained that while there were references in the record to a few prior altercations between patrons, the "plaintiff produced insufficient evidence of heightened foreseeability in the form of prior similar incidents or other indications of a reasonably foreseeable risk of a violent criminal assault on defendant's premises that would have imposed upon defendant an obligation to provide any guard, or additional guards, to protect against third party assaults." (*Id.* at p. 245.)

A lack of evidence is similarly fatal to Zuniga's premises liability claim. Although nearly identical criminal incidents are not required, the heightened

foreseeability necessary to impose a duty to provide security must be "satisfied by a showing of prior *similar* criminal incidents (or other indications of a reasonably foreseeable risk of violent criminal assaults in that location)." (*Delgado, supra,* 36 Cal.4th at p. 245.) Zuniga testified at his deposition that, during previous visits to Finnegan's, he saw various members of Finnegan's security taunt patrons and try to instigate fights. This testimony does not rise to the level of satisfying the heightened foreseeability requirement necessary to impose a duty on Marengo to provide security. Under *Delgado*, evidence of some prior altercations is insufficient to establish a duty to provide security guards. (*Ibid*.) Additionally, "foreseeability must be measured by what the defendant actually knew" (*Margaret W. v. Kelley R.* (2006) 139 Cal.App.4th 141, 156), and it is undisputed that Marengo had received no complaints about Finnegan's or its security, nor had Marengo received notice of any misconduct by Finnegan's security. Marengo also had no notice of any personal injuries arising from motor vehicle accidents in the parking lot. Marengo considered the Marengo Center and surrounding neighborhood to be safe. As set forth above, Zuniga did not establish that the trial court erred in excluding any of the other evidence that he offered on this issue. Accordingly, based on the undisputed facts before it, the trial court did not err in concluding Marengo had no duty to provide security for the parking lot.

Zuniga contends that finding no duty "is the functional equivalent of a ruling that nobody had a duty to provide security in the parking lot for this massive St. Patrick's Day Party where alcohol was served to and consumed by the public." That is not the issue presented by this appeal. The question is whether, on this record, there was a triable issue as to whether Marengo had a duty to provide security. No admissible evidence of the size of the event was offered in opposition to Marengo's motion for summary judgment. Nor were we directed to any evidence or authorities from which we could conclude the event at issue was inherently dangerous. (See *Sharon P., supra,* 21 Cal.4th at p. 1192 ["In the absence of solid support for the categorical conclusion that all parking

garages are inherently dangerous, and are distinctly so in comparison to other types of premises, we are reluctant to single out garage owners for imposition of the substantial monetary and social costs associated with the hiring of security guards"].) Instead, Zuniga relies on a case pre-dating *Ann M.* and *Sharon P.*, *Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112 (*Isaacs*), to argue that serving alcohol in a beer garden set up inside a parking lot creates a foreseeably dangerous interaction between intoxicated patrons and intoxicated drivers regardless of the lack of prior similar incidents. In *Isaacs*, a doctor was shot in a hospital parking lot across the street from the emergency room. (*Id*. at p. 120.) He sued the hospital for failure to take adequate security measures. (*Ibid*.) The trial court granted the hospital's motion for nonsuit because the hospital had no notice of similar crimes in a similar area. (*Id*. at p. 123.) Our Supreme Court held that evidence of foreseeability cannot be limited to prior similar criminal acts. (*Id*. at p. 126.) Rather, the totality of the circumstances, including that the hospital was in a high crime area, there were several threatened assaults in the emergency room area near the parking lot, and the parking lot was poorly lit, suggested the foreseeability of an assault in the parking lot should have been submitted to the jury. (*Id*. at p. 130.) In *Ann M.*, the court revisited the rule announced in *Isaacs*, explaining "it was unnecessary for this court to consider the viability of 'the prior similar incidents' rule in order to decide the *Isaacs* case: the record contained evidence of prior, violent, third party attacks on persons on the hospital's premises in close proximity to where the attack at issue in that case occurred." (*Ann M.*, *supra*, 6 Cal.4th at p. 678.) Regardless, *Isaacs* is not helpful to Zuniga because he is relying on speculation to support his foreseeability argument rather than on any actual evidence. The record contains none of the types of evidence bearing on foreseeability that created an issue of fact in *Isaacs*. Zuniga simply produced insufficient evidence to impose a duty on Marengo to hire security.

Additionally, the absence of a duty by Marengo to provide security does not mean that no one owed any duty to Zuniga. "A proprietor that has no duty under *Ann M*. and

Sharon P. to hire a security guard or to undertake other similarly burdensome preventative measures still owes a duty of due care to a patron or invitee by virtue of the special relationship, and there are circumstances (apart from the failure to provide a security guard or undertake other similarly burdensome preventative measures) that may give rise to liability based upon the proprietor's special relationship." (*Delgado, supra*, 36 Cal.4th at pp. 240-241.) For example, "a proprietor who serves intoxicating drinks to customers for consumption on the premises must 'exercis[e] reasonable care to protect his patrons from injury at the hands of fellow guests.' " (*Id.* at p. 241.) Zuniga's arguments are all dependent on the notion that Marengo—the landowner—owed him a duty to provide security under these circumstances, and it is this narrow claim that we reject. Accordingly, the trial court did not err in granting Marengo's motion for summary judgment.

III. DISPOSITION

The judgment is affirmed. Respondent Marengo Properties LLC shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

RENNER, J.

We concur:

/S/

HULL, Acting P. J.

/S/

ROBIE, J.